

110TH CONGRESS  
1ST SESSION

# H. R. 3865

To amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare Program.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 2007

Mr. MCGOVERN (for himself and Mr. JONES of North Carolina) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare Program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Home Health Care  
5 Access Protection Act of 2007”.

1 **SEC. 2. PROTECTING ACCESS TO MEDICARE HOME HEALTH**  
2 **SERVICES.**

3 (a) IN GENERAL.—Section 1895(b)(3) of the Social  
4 Security Act (42 U.S.C. 1395fff(b)(3)) is amended—

5 (1) in subparagraph (B)(iv), by adding at the  
6 end the following: “Such adjustment shall not be  
7 made with respect to home health services for pay-  
8 ment in 2008 and in making such an adjustment  
9 with respect to home health services for payment in  
10 a subsequent year, the Secretary shall evaluate  
11 changes in case mix using standards developed by  
12 the Secretary consistent with the processes described  
13 in subparagraph (D)(i) and taking into account the  
14 criteria described in subparagraph (D)(ii).”; and

15 (2) by adding at the end the following new sub-  
16 paragraph:

17 “(D) PROCESSES AND CRITERIA FOR  
18 EVALUATING CHANGES IN CASE MIX.—For pur-  
19 poses of subparagraph (B)(iv)—

20 “(i) PROCESSES.—The processes de-  
21 scribed in this clause are the following:

22 “(I) In developing standards re-  
23 ferred to in such subparagraph, the  
24 Secretary shall convene a Technical  
25 Advisory Group consisting of stake-  
26 holders, including individuals and or-

ganizations representing the interests of Medicare beneficiaries, the National Association for Home Care & Hospice, and the Visiting Nurse Associations of America, health care academia, and health care professionals, in equal numbers from each and limited to parties without an existing contractual relationship with the Secretary, to advise the Secretary concerning the establishment of such standards in order to distinguish between real changes in case mix and changes in coding or classification of different units of services that do not reflect real changes in case mix. The Technical Advisory Group shall be given the opportunity to review and comment on any proposed rulemaking or final determination by the Secretary on such standards prior to such rulemaking or determination.

“(II) If the Secretary engages an outside contractor to participate in the evaluation of case mix changes de-

1 scribed in subclause (I), the Secretary  
2 shall only utilize a contractor that has  
3 not previously participated in the de-  
4 sign and establishment of the case  
5 mix adjustment factors under sub-  
6 paragraph (B).

7 “(III) If the Secretary deter-  
8 mines that any increase in case mix  
9 relates to changes in the volume or  
10 nature of services provided to home  
11 health services patients, the Secretary  
12 shall evaluate that increase through  
13 actual review of claims and services  
14 and shall not use any proxy or surro-  
15 gate for determining whether the  
16 change in volume or nature of services  
17 is reasonable and necessary.

18 “(IV) The Secretary shall estab-  
19 lish the standards referred to in sub-  
20 clause (I) by regulation.

21 “(V) With respect to establish-  
22 ment of such standards, the Secretary  
23 shall make public all data, reports,  
24 and supporting materials, including  
25 any comments by the Technical Advi-

1           sory Group pursuant to subclause (I),  
2           regarding the standards at the time of  
3           notice of such standards.

4           “(ii) CRITERIA.—The criteria de-  
5           scribed in this clause are the following:

6                   “(I) The impact of changes in  
7                   the program under this title that may  
8                   affect the characteristics of individ-  
9                   uals receiving home health services.

10                   “(II) The impact of changes in  
11                   the provision of health care services  
12                   by providers of services other than  
13                   home health agencies.

14                   “(III) Distinctions in the charac-  
15                   teristics of individuals initiating home  
16                   health services from the community  
17                   and institutional care settings.

18                   “(IV) Whether any changes in  
19                   coding resulted in a change in expend-  
20                   itures overall annually and dis-  
21                   regarding changes in coding that do  
22                   not have an overall expenditure im-  
23                   pact.

24                   “(V) Any other factors deter-  
25                   mined appropriate by the Secretary in

1 consultation with the Technical Advi-  
2 sory Group under clause (i)(I).”.

3 (b) VOIDING OF PROPOSED CASE MIX ADJUST-  
4 MENT.—The Secretary of Health and Human Services  
5 shall not take any action to implement or otherwise carry  
6 out provisions contained in the final rule published on Au-  
7 gust 29, 2007, on pages 49762–49945 of volume 72 of  
8 the Federal Register, insofar as such provisions propose  
9 to make a case mix adjustment to the standardized pay-  
10 ment amounts under the prospective payment system for  
11 home health services under section 1895 of the Social Se-  
12 curity Act (42 U.S.C. 1395fff) to account for changes in  
13 coding that were not related to an underlying change in  
14 patient health status. The Secretary shall republish any  
15 rates specified in such rule to take into account the appli-  
16 cation of the previous sentence. The Secretary shall only  
17 institute an adjustment under subparagraph (B)(iv) of  
18 such section in compliance with subparagraph (D) of such  
19 section, as added by subsection (a)(2).

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